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NOTES.

CONGRESSIONAL REGULATION OF SALES WITHIN A STATE.—The early cases in the Supreme Court where the commerce clause of the federal constitution was construed almost exclusively concerned state statutes alleged to be in contravention of that clause, and the court held that not only the transportation of goods into a state but their incorporation into the general mass of property within the state was protected. Incorporation was brought about either by a sale or mixing with other property within the state or by breaking the original package in which the goods were imported. Statutes regulating sales by the importer in the original package were therefore invalid. *Brown* v. *Maryland* (1827) 12 Wheat. 419. And a state could not regulate the sale of goods where the delivery in pursuance of the sale would be interstate transportation. *Robbins* v. *Shelby County Taxing District* (1887) 120 U. S. 489. Where, however, goods had been incorporated in the general mass of property in the state, they were subject to uniform state laws regulating the sale of property; *Emert* v. *Missouri* (1895) 156 U. S. 296; and likewise the state might regulate the manufacture of goods, even though intended for export. *Kidd* v. *Pearson* (1889) 128 U. S. 1.

The court has had a different class of cases to deal with recently under the Sherman Anti-Trust Act. In deciding in *Addyston Pipe & Steel Co.* v. *United States* (1899) 175 U. S. 211, that combinations to regulate the sale of goods and their delivery in another state pursuant to such sale were illegal, the court did no more than follow the *Robbins* case, and in deciding in *United States* v. *E. C. Knight Co.* (1895) 156 U. S. 1, that Congress had no power to regulate contracts restricting the manufacture of goods even if intended for export to

another state, the court did not go outside *Kidd* v. *Pearson*. In the recent case of *Swift & Co.* v. *United States* (1905) 196 U. S. 375, however, the court seems to have laid down a rule in cases of conspiracies in restraint of trade different from that in cases of state interference. In this case the court restrained the defendants from combining to regulate the sale of meats where no interstate delivery was to be made, and without reference to whether the sales were in the original packages. In so deciding the court seems to be laying down a rule contrary to that in *Emert* v. *Missouri*, though it seems not to have intended to overrule that case, since it declared: "But we do not mean to imply that the rule which marks the point at which state taxation or regulation becomes permissible necessarily is beyond the scope of interference by Congress in cases where such interference is deemed necessary for the protection of commerce among the states."

The court has frequently declared that the commerce clause protected interstate commerce from direct regulation only, and not from indirect and incidental interference, as in the *Knight* case and in *Emert* v. *Missouri*, supra. There appears however to have been a departure from this rule in the case of statutes discriminating against foreign goods which had been incorporated in the property of the state. Here, though there was no more direct interference with interstate commerce than if all goods except foreign goods in the original packages had been taxed, the further fact of discrimination made the statutes invalid. *Voight* v. *Wright* (1891) 141 U. S. 62. In the principal case, there was a different danger to guard against, and again departing from the strict rule that only direct interference is cognizable by Congress, the court has restrained the performance of agreements relating to strictly intra-state sales where those agreements were parts of one entire scheme to regulate interstate commerce. The previous departure of the court from the strict rule was one whose limits were easily fixed, but the effect of the present decision is more difficult to foresee. The result appears to have been reached by applying the criminal-law principle that the plan may make the parts unlawful; and this would seem to indicate that a plan to interfere with interstate commerce, where all the parts of the plan were in themselves outside the cognizance of Congress, might be restrained. If this be so, the distinction between the principal case and *United States* v. *E. C. Knight Co.* consists simply in the number of different parts in the scheme, and their effectiveness to accomplish their purpose. The court may however restrict its decision to cases, as was the fact in the principal case, where there are parts in the scheme which are in themselves unlawful. Under such a restriction of the decision, the court, though still having to decide a large class of cases on their precise facts, would yet have a distinct line of demarcation between cases following the principal case, and cases like *United States* v. *E. C. Knight Co.* See 4 COLUMBIA LAW REVIEW, 490; 5 id. 298.

THE REMOVAL OF EMINENT DOMAIN PROCEEDINGS TO A FEDERAL COURT.—By insisting on the fact that in eminent domain proceedings a state has chosen to act through the machinery of its regularly constituted courts, rather than by the agency of a tribunal not called a